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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,530	01/25/2002	Paul L. Lagraff	LAG 0104 PUS	3015

7590 02/04/2003

Artz & Artz, P.C.
28333 Telegraph Road, Ste. 250
Southfield, MI 48304

EXAMINER	
RAEVIS, ROBERT R	
ART UNIT	**PAPER NUMBER**
2856	

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,530	LAGRAFF ET AL.	
	Examiner	Art Unit	
	Robert R. Raevis	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11 and 20-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11 and 20-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: surfaces 98, 100, 102, 104; portion 64; spaces 88, 86. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because lead lines for the following elements are incorrectly positioned: surface 46, section 62. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Claims 8, 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith.

Smith teaches every limitation of claim 8, including: greased laboratory slide; base 35/10; top 22; vacuum 18; and inlet 23.

As to claim 8; the "laboratory" slide appears to be a microscope slide. In addition, Smith's tapered inlet 23 suggests that the air accelerates as it is drawn towards the slide 36. Finally, the direction of the tapered inlet suggests that the direction of the flow of air is perpendicular to the slide.

As to claim 9; the 75 mm slide includes a minimum of 48 mm of samples (2mm x 24), suggestive of approximately two-thirds. See col. 5, lines 1-13.

4. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of either Langer or McFarland et al.

Comments that exist above similarly apply here.

As to claims 8 and 9; either McFarland et al (Fig. 3) or Lange (Fig. 6, nozzle 16) teach that elongated apertures (like Smith's nozzle) may effectively use curved regions with their entry slits to provide for representative samples of air in impactors. Please note that McFarland's Fig. 3 expressly illustrates with dashed lines that the flow is perpendicular to the collector surface, and that Langer's Fig. 6 expressly illustrates with solid arrows that the flow is perpendicular to the collector surface.

5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claim 8 above, and further in view of Berger.

As to claims 10, 11; Berger refers (col. 5, lines 28+) the need for a flow stability and pressure differential, suggestive of calibration for impact particle sampling.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of wither Langer or McFarland et al as applied to claim 8 above, and further in view of Berger.

As to claims 10, 11; Berger refers (col. 5, lines 28+) the need for a flow stability and pressure differential, suggestive of calibration for impact particle sampling.

7. Claims 1, 5-7, 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of either Mapel or Dewhurst.

As to claims 1, 7, 20, 21, 22, 23, 25 and 26; it would have been obvious to utilize an inlet having both venturi and laminar section in Smith because either (1) Marpel teaches use of a nozzle with both venturi and laminar section in Fig. 1 to effectively direct particles to a surface of interest, or (2) Dehurst teaches (col. 5, lines 10-15) use of both laminar and venturi sections to focus particles onto a collector. Also, the connected structure within the base portion 10 may be deemed to be a part of the base, as it all supports the slide.

As to claims 5 and 6; note Marpel's sealed cap 13A and ring 18; suggestive of use of a telescopic cap and seal in lieu of Smiths pivoting cap.

As to claim 24; note that Smith employs a longitudinally extending inlet.

8. Claims 2-4 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, in view of wither Marpel or Dewhurst as applied to claims 1 and 22 above, and further in view of either McFarland et al or Langer.

As to claims 2, 24; either McFarland et al (Figure 2, nozzle 49) or Langer (Figure 6, nozzle 16) teach that elongated apertures (like Smith's nozzle) may effectively use arcuate end portions to provide for representative samples of air in impactors.

As to claims 3, 4; McFarland's ends slope from their arcuate end portions, and the sides converge (as in Figure 3).

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-4, 8, 20-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/705,602 in view of either Dewhurst or Marpel, and further in view of either Langer or McFarland et al.

As to claims 1-4, 8, 20-26; it would have been obvious to employ an inlet having both venturi and laminar section in Smith because either (1) Marpel teaches use of a nozzle with both venturi and laminar section in Fig. 1 to effectively direct particles to a surface of interest, or (2) Dehurst teaches (col. 5, lines 10-15) use of both laminar and venturi sections to focus particles onto a collector. In addition, eiher McFarland et al (Fig. 3) or Lange (Fig. 6, nozzle 16) teach that elongated apertures (like Smith's nozzle) may effectively use curved regions with their entry slits to provide for representative samples of air in impactors. Please note that McFarland's Fig. 3 expressly illustrates with dashed lines that the flow is perpendicular to the collector surface, and that Langer's Fig. 6 expressly illustrates with solid arrows that the flow is perpendicular to the collector surface.

This is a provisional obviousness-type double patenting rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Raevis whose telephone number is (703) 305-4919. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Raevis
AU2856
PRIMARY